

LAR 135. CUSTODY OF PROPERTY

(a) Safe Keeping of Property When Seized. When a property is seized the marshal shall take custody and arrange for adequate and safe moorage and necessary security for the safe keeping of the property, which may include in the marshal's discretion the assignment of keepers to the property, or the appointment of a shipyard, terminal, yacht club, marina, or similar facility as custodian of the property for the marshal.

(b) Appointment of Substitute Custodian. When property has been or will be taken into custody by the marshal, any party then appearing may also move for an order appointing a substitute custodian for the property. Such a motion shall be accompanied by the Affidavit of Proposed Substitute Custodian and a proposed Order Appointing Substitute Custodian. Notice of the motion shall be given to the marshal and to counsel for all parties who have appeared. The court may also appoint a substitute custodian on its own motion.

The affidavit of the proposed substitute custodian shall state with particularity: (1) that said custodian has knowledge of and experience with care of property of the type to be arrested or under arrest, has adequate facilities for safe-keeping of the property or that such facilities have been arranged, can safely move the property to those facilities, if necessary, and can safely keep the property; (2) the custodian's fees and expenses per day for safe-keeping, which shall include moorage or shall state any separate arrangements made for moorage; (3) that the proposed custodian has knowledge of the requirements of this rule; (4) that the proposed substitute custodian is not interested in the outcome of the action in which the property is or will be under arrest; and (5) that the proposed substitute custodian accepts appointment as substitute custodian and possession of the property and will safely keep the property for the duration of his appointment as substitute custodian.

The proposed Order Appointing Substitute Custodian shall include the following recitals:

1. The property has been or will be arrested by the marshal;
2. The present location of the property or the location where it will be when arrested, and the location for its safe-keeping while in the custody of the proposed custodian;
3. The fees and expenses to be charged by the custodian and for moorage will be less than the cost of leaving the property in the custody of the marshal;
4. The proposed custodian has no interest in the outcome of the action in which the property is or will be under arrest;
5. The property will not be moved and no person except the appointed substitute custodian will be allowed to enter on the property except as necessary to transfer the property to the facilities of the substitute custodian for safe-keeping and except as necessary to adequately safe-keep and protect the property, except as may be expressly ordered by the court;

6. The moving party has obtained the insurance coverage required by these rules;
7. The moving party agrees to release the United States and the marshal from any and all liability and responsibility arising out of the care and custody of the property, from the time the marshal transfers possession of the property to the substitute custodian until the property is released or sold, and agrees to hold harmless and indemnify the United States and the marshal from any and all claims whatsoever arising out of the substitute custodian's possession and safe-keeping;
8. The proposed substitute custodian accepts appointment as substitute custodian and possession of the property and will safely keep the property for the duration of the appointment as substitute custodian.

The proposed order must be approved in writing by the marshal prior to presentation to a judicial officer.

The court will determine whether the proposed substitute custodian is capable of and will safely keep the property. The order entered by the court after hearing the motion may fix fees and expenses and the terms of the custodianship in accordance with the recitals as made above, and may provide for other necessary arrangements. Any subsequent increase in the costs of the custodianship, movement of the property, or other changes in arrangements will be allowed only upon further order of the court.

It shall be the responsibility of the moving party to arrange compensation for the substitute custody, safe-keeping, shifting, movement, or other expenses incident to the custody of the property during the period of substitute custody. Any such charges, fees, or expenses incurred as a result of the order may be allowed as administrative expenses upon motion after the release or judicial sale of the property.

(c) Insurance. The marshal may order insurance to protect the marshal, his deputies, keepers, and substitute custodians from liabilities assumed in arresting and holding the property, and in performing whatever services may be undertaken to protect the property, and to maintain the court's custody with respect to such property. The party who applies for arrest or attachment of the property shall reimburse the marshal for premiums paid for the insurance and shall be an added insured on the policy. The party who applies for removal of the property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the property is in custody of the court. A party moving for the appointment of a substitute custodian shall obtain insurance to protect the court-appointed substitute custodian from liability assumed in receiving an arrested property for custodianship and in performing whatever services are undertaken to safe-keep and protect the property while in the custody of the substitute custodian. The premiums charged for this insurance shall be paid directly by the moving party, who may move the court, after the release or judicial sale of the property to have the cost of the insurance deemed an administrative expense of keeping the property.

(d) Cargo Handling, Repairs, and Movement of the Vessel. Following arrest or attachment of a vessel, no cargo handling, repairs, or movement may be made without an order of court. The applicant for such an order shall give notice to the marshal and to all parties of record. Upon proof of adequate insurance coverage of the applicant to indemnify the marshal for his liability, the court may direct the marshal to permit cargo handling, repairs, movement of the vessel, or other operations. Before or after the marshal has taken custody of a property, cargo or other property, any party of record may move for an order to remove or place the property, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the marshal and to all parties of record. The court will require that adequate insurance on the property will be maintained by the successor to the marshal, before issuing the order to change arrangements.

(e) Motions for Changes in Arrangements. When property has been or will be taken into custody by the marshal, any party then appearing may move the court to dispense with keepers, or to remove to or place the property at a specified shipyard, terminal, yacht club, marina or similar facility, or similar relief. Notice of the motion shall be given to the marshal and to counsel for all parties which have appeared. The court will determine whether such a facility can and will safely keep the property. The order entered by the court after hearing the motion may fix reasonable towage, storage, moorage and any other authorized fee or charge incurred by or through the marshal in arranging for keepers, or for shifting or movement of the property. The order may also provide for the deposit in advance with the marshal by the party seeking such order of funds enabling payment of any such charges when and as incurred.

(f) Claim by Supplier for Payment of Charges. A person who has furnished services or supplies to property in custody, and has not been paid, and claims the right to payment as an expense of administration, should submit an invoice to the marshal without delay. The marshal may decline to pay an invoice unless it is ordered paid by the court. The supplier has a right to submit the invoice to the court for approval, in the form of a verified claim, at any time before the property is released or the res is distributed. The supplier must serve copies of the claim on the marshal and the counsel for all parties who have appeared in the action. The court may decline to consider the claim until a hearing is conducted to decide other claims against the property.

[Effective May 1, 1992; amended effective July 1, 1997.]